

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PATRICK BRADY, et al.

Plaintiffs,

v.

AIR LINE PILOTS ASSOCIATION, INT'L,

Defendant.

Civil Action No. 02-2917 (JEI)

**PLAINTIFFS' FOURTH REQUEST
FOR PRODUCTION OF DOCUMENTS ON THE ISSUE OF DAMAGES**

Pursuant to Rule 34, Plaintiffs hereby demand that Defendant, Air Line Pilots Association, International, produce the following documents in accordance with Rule 34 of the Federal Rules of Civil Procedure and Local Civil Rule 34.1.

1. Any document or documents, including by not limited to a report or an accounting, sufficient to show the amounts of ALPA union membership dues (agency fees) paid by each member of the Class of TWA Pilots to ALPA during the period January 1, 2001 through April 30, 2002, inclusive.

DATE: March 18, 2013

TRUJILLO RODRIGUEZ & RICHARDS, LLC

BY: Nicole M. Acchione
Lisa J. Rodriguez
Nicole M. Acchione
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GREEN JACOBSON P.C.
Allen P. Press
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EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PATRICK BRADY, et al.

Plaintiffs,

v.

AIR LINE PILOTS ASSOCIATION, INT'L,

Defendant.

Civil Action No. 02-2917 (JEI)

PLAINTIFFS' FIRST SET OF DAMAGE INTERROGATORIES

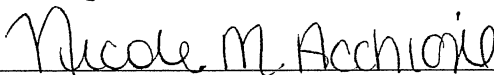
Plaintiffs hereby demand that Defendant, Air Line Pilots Association, International ("ALPA"), provide verified answers to the following Interrogatory in accordance with Rule 33 of the Federal Rules of Civil Procedure and Local Civil Rule 33.1.

1. State the amount of union dues or agency fees paid to ALPA by each member of the Class of TWA pilots during the period January 1, 2001 through April 30, 2002, inclusive.

DATE: March 18, 2013

TRUJILLO RODRIGUEZ & RICHARDS, LLC

BY:



Lisa J. Rodriguez
Nicole M. Acchione
258 Kings Highway East
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VERIFICATION

I, _____, in my capacity as the _____ of
the Air Line Pilots Association, International, being duly sworn, according to law, upon
his/her oath, deposes and says:

1. In accordance with Local Civil Rule 33.1(b), the information contained in
the foregoing Interrogatory Answer which is not within my personal knowledge is as
follows: [describe knowledge]. This information was obtained by me from the following
individual(s): [identify name and address of every person from whom information was
received].

2. Certain of the information contained in the foregoing Interrogatory
Answer was obtained from the following document(s): [specify information and
documents referred to or relied upon in supplying information].

I have read the attached Interrogatory Answer. The information contained therein
is true and correct.

Signature

Sworn and subscribed
before me this ____ day
of _____, 2013

{Notary Signature}

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PATRICK BRADY, et al.,

Plaintiffs,

v.

AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL,

Defendant.

Civil Action No. 02-2917 (JEI)

**DEFENDANT'S RESPONSES AND OBJECTIONS TO PLAINTIFFS'
FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS ON
THE ISSUE OF DAMAGES**

Defendant Air Line Pilots Association, International ("ALPA"), by its attorneys Archer & Greiner and Paul, Weiss, Rifkind, Wharton, & Garrison, hereby responds and objects to Plaintiffs' Fourth Request for Production of Documents on the Issue of Damages as follows:

GENERAL RESPONSES AND OBJECTIONS

ALPA objects to each of Plaintiffs' requests on the following grounds, which are incorporated by reference in the response below:

1. ALPA objects to Plaintiffs' Request to the extent that the requests contained therein are not reasonably calculated to lead to the discovery of admissible evidence.
2. ALPA objects to Plaintiffs' Request to the extent that the requests contained therein are vague, ambiguous, overbroad, oppressive or unduly burdensome.

3. ALPA objects to each request to the extent that the information sought (a) is subject to the attorney-client privilege; (b) constitutes work product; (c) was prepared in anticipation of litigation or for trial; or (d) is otherwise privileged or exempt from discovery. In the event that a document that is privileged or exempt from discovery is produced by ALPA, it will have been produced through inadvertence and shall not constitute a waiver of privileges applicable to that or any other document.

4. ALPA objects to Plaintiffs' Request to the extent that it seeks information coming into existence after April 3, 2002, the date when the National Mediation Board transferred to the Allied Pilots Association the representational rights for the former TWA pilots, as not reasonably calculated to lead to the discovery of admissible evidence.

5. ALPA's responses are not intended to waive or prejudice any objections defendants may later assert, including, without limitation, objections as to the admissibility of any response or category of responses at trial.

6. ALPA reserves the right to supplement, amend or correct all or any parts of any of the responses provided herein.

SPECIFIC RESPONSES AND OBJECTIONS

Subject to and without waiver of each of the General Responses and Objections set forth above, ALPA specifically responds and objects as follows:

Document Request No. 1:

Any document or documents, including but not limited to a report or an accounting, sufficient to show the amounts of ALPA union membership dues (agency fees) paid by each member of the class of TWA pilots to ALPA during the period January 1,

2001 through April 30, 2002, inclusive.

Response and Objections to Document Request No. 1:

ALPA objects to this Request on the ground that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence, as plaintiffs have not advanced any allegations, claims for damages, or damage theories that implicate the requested information. To the extent plaintiffs seek the requested documents for inclusion in their damage calculations, ALPA states that, as a matter of law, union dues or agency fees paid to ALPA by members of the class of TWA pilots are not recoverable in this action, and ALPA further objects to this Interrogatory as untimely. Plaintiffs were obligated to give ALPA notice of their damage theory with their initial submission of expert reports. Plaintiffs may not now attempt to advance new damage theories or calculations after both parties have already selected experts, served expert reports, taken expert and fact witness depositions, and dedicated substantial resources to developing and supporting their respective damage theories.

To the extent that the Request applies to "any" documents sufficient to show the amounts of union membership dues paid to ALPA by the class of TWA pilots, ALPA objects that the Request is unduly burdensome.

Dated: Haddonfield, NJ
April 22, 2013

Theodore V. Wells, Jr., Esquire
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& Garrison LLP
1285 Avenue of the Americas
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Attorneys for Defendant Air Line Pilots Association, International
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EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PATRICK BRADY, et al.,

Plaintiffs,

v.

AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL,

Defendant.

Civil Action No. 02-2917 (JEI)

**DEFENDANT'S RESPONSES AND OBJECTIONS TO
PLAINTIFFS' FIRST SET OF DAMAGE INTERROGATORIES**

Defendant Air Line Pilots Association, International ("ALPA"), by its attorneys Archer & Greiner and Paul, Weiss, Rifkind, Wharton, & Garrison, hereby responds and objects to Plaintiffs' First Set of Damage Interrogatories as follows:

GENERAL RESPONSES AND OBJECTIONS

The following general responses and objections are incorporated into each specific response and objection as if fully set forth therein.

1. ALPA objects to Plaintiffs' Interrogatories to the extent that the requests contained therein are not reasonably calculated to lead to the discovery of admissible evidence.
2. ALPA objects to Plaintiffs' Interrogatories to the extent that the requests contained therein are vague, ambiguous, overbroad, oppressive or unduly burdensome.
3. ALPA objects to each interrogatory to the extent that the information sought (a) is subject to the attorney-client privilege; (b) constitutes work product; (c) was

prepared in anticipation of litigation or for trial; or (d) is otherwise privileged or exempt from discovery.

4. In responding and objecting to the Interrogatories, ALPA does not intend to waive, and shall not be construed as having waived, any privilege or protection, including, but not limited to, the attorney-client privilege and work product protection.

5. ALPA objects to Plaintiffs' interrogatories to the extent that it seeks information coming into existence after April 3, 2002, the date when the National Mediation Board transferred to the Allied Pilots Association the representational rights for the former TWA pilots, as not reasonably calculated to lead to the discovery of admissible evidence.

6. ALPA submits these answers without conceding the relevancy or materiality of the subject matter of any interrogatory or the information requested in any such interrogatory.

7. ALPA reserves the right to supplement, amend or correct all or any parts of any answer provided herein, and reserves the right to object to the admissibility of all or any part of the answers provided herein and any information contained herein.

SPECIFIC RESPONSES AND OBJECTIONS

Subject to and without waiver of each of the General Responses and Objections set forth above, ALPA specifically responds and objects as follows:

Interrogatory No. 1:

State the amount of union dues or agency fees paid to ALPA by each member of the class of TWA pilots during the period January 1, 2001 through April 30, 2002, inclusive.

Response and Objections to Interrogatory No. 1:

ALPA objects to this Interrogatory on the ground that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence, as plaintiffs have not advanced any allegations, claims for damages, or damage theories that implicate the requested information. To the extent plaintiffs seek the requested information for inclusion in their damage calculations, ALPA states that, as a matter of law, union dues or agency fees paid to ALPA by members of the class of TWA pilots are not recoverable in this action, and ALPA further objects to this Interrogatory as untimely. Plaintiffs were obligated to give ALPA notice of their damage theory with their initial submission of expert reports. Plaintiffs may not now attempt to advance new damage theories or calculations after both parties have already selected experts, served expert reports, taken expert and fact witness depositions, and dedicated substantial resources to developing and supporting their respective damage theories.

Dated: Haddonfield, NJ
April 22, 2013

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Attorneys for Defendant Air Line Pilots Association, International
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EXHIBIT E

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May 29, 2013

VIA CM/ECF ONLY

The Honorable Joseph E. Irenas, S.U.S.D.J.
United States District Court for the District of New Jersey
Mitchell H. Cohen Federal Building & U.S. Courthouse
1 John F. Gerry Plaza, Room 310
Camden, NJ 08101

**Re: Brady, et al v. Air Line Pilots Association, Int'l,
Civil Action No. 02-2917 (JED) (D.N.J. Camden)**

Dear Judge Irenas:

Enclosed please find Defendant's letter in response to Plaintiffs' letter dated May 23, 2013.

Thank you.

Respectfully submitted,

/s/ Kerri E. Chewning

KERRI E. CHEWNING

KEC:gam

Enclosure

cc: All Counsel via CM/ECF
9814584v1

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May 29, 2013

VIA CM/ECF ONLY

The Honorable Joseph E. Irenas, S.U.S.D.J.
United States District Court for the District of New Jersey
Mitchell H. Cohen Federal Building & U.S. Courthouse
1 John F. Gerry Plaza, Room 310
Camden, NJ 08101

**Re: Brady, et al v. Air Line Pilots Association, Int'l,
Civil Action No. 02-2917 (JEI) (D.N.J. Camden)**

Dear Judge Irenas:

Enclosed please find Defendant's letter in response to Plaintiffs' letter dated May 23, 2013.

Thank you.

Respectfully submitted,

/s/ Kerri E. Chewning

KERRI E. CHEWNING

KEC:gam
Enclosure
cc: All Counsel via CM/ECF
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T. ROBERT ZOCROWSKI, JR.

*NOT ADMITTED TO THE NEW YORK BAR

May 29, 2013

Via ECFThe Honorable Joseph E. Irenas, S.U.S.D.J.
United States District Court for the District of New Jersey
Mitchell H. Cohen Federal Building & U.S. Courthouse
1 John F. Gerry Plaza, Room 310
Camden, NJ 08101Re: *Brady, et al. v. Air Line Pilots Association*
Civil Action No. 02-2917

Dear Judge Irenas:

We write in response to Lisa Rodriguez's letter to the Court dated May 23, 2013 concerning ALPA's objections to Plaintiffs' First Set of Damage Interrogatories and Plaintiffs' Fourth Request for the Production of Documents on the Issue of Damages (together, the "Requests"). We believe plaintiffs' request for a discovery conference is premature and contrary to the purpose of Local Rule 37.1(a)(1) since plaintiffs' counsel failed to meet and confer regarding this issue. Nevertheless, in anticipation of tomorrow's telephonic conference, we outline below ALPA's objections to producing the requested discovery.

I. The Requests Evidence an Attempt to Belatedly Amend Plaintiffs' Pleadings

Ms. Rodriguez's letter to the Court states: "As part of their damages, plaintiffs may seek a refund of union dues paid during the period of time that ALPA breached its duty of fair representation to the TWA pilots." Ms. Rodriguez fails to note, however, that plaintiffs have not actually pleaded a claim for dues restitution and that the Complaint lacks *any* allegations of facts that would support or otherwise put ALPA on notice of such a claim. It was on that basis, among others, that ALPA objected to

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Lisa J. Rodriguez, Esq.

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production of discovery sought by the Requests relating to “the amount of union dues or agency fees paid to ALPA by each member of the class of TWA pilots” during the relevant time period. Ms. Rodriguez’s May 8, 2013 letter to ALPA’s counsel concerning ALPA’s Responses and Objections to the Requests (Exhibit A to May 23 Ltr. from L. Rodriguez to J. Irenas) was the first time that plaintiffs even hinted that they would attempt to seek restitution of union dues as a remedy in this action. Plaintiffs’ belated presentation of a restitution-based damage theory violates the basic requirement that plaintiffs “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests,” with allegations of fact “suggestive of [the proscribed] conduct.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); *Umland v. Planco Fin. Servs.*, 542 F.3d 59 (3d Cir. 2008). Therefore, to the extent that plaintiffs now intend to claim restitution of union dues, they must seek leave of Court to amend their Complaint, which application ALPA would oppose as untimely and prejudicial to ALPA.

II. A Belated Dues Restitution Claim Would Require New Proof and Discovery

Plaintiffs claim that their discovery requests are timely “as long as damage discovery is not closed [and] the court has not yet set a discovery end date.” This position, however, ignores that plaintiffs seek discovery on *new, unpleaded* damage claims and issues that would also require ALPA to discover and prove evidence in support of a defense that it had not—and could not have—contemplated in its prior discovery efforts. Although plaintiffs request only the sum of dues paid to ALPA during the specified period, the calculation of restitutionary damages requires much more. Both parties would need to determine and support their assessment of the *pro rata* share of dues spent in violation of the law, in accordance with a vast body of case law. *See, e.g., Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 212-213 (1977) (holding that plaintiff was entitled only to “a sum. . . of the moneys exacted from him as is the proportion of the union’s total expenditures made for such political activities to the union’s total budget”); *Prescott v. Cnty. of El Dorado*, 177 U.S. 1102, 1109 (explaining that “complete restitution” was too “draconian a rule”). Unless plaintiffs intend to maintain that ALPA devoted *all* dues assessments paid by former TWA pilots to breaches of the duty of fair representation, both parties will need to submit evidence in support of the proper *pro rata* allocation, necessitating further discovery from both fact and expert witnesses and even the re-opening of completed depositions. Plaintiffs ignore these considerations.

III. The Requested Discovery Relates to Damages That Are Not Recoverable as a Matter of Law

Although we do not believe it necessary to address in detail the underlying merits of plaintiffs’ unpleaded claim for restitution, we briefly address plaintiffs’ assertion that “restitution of union dues has been recognized as an appropriate remedy against a union.”

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Lisa J. Rodriguez, Esq.

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Case law makes clear that restitution of union dues is not a permissible measure of damages in duty of fair representation cases premised, as here, on a union's conflict of interest. Restitution is appropriate only where the union's "offending conduct . . . was the *collection and use* of dues money for improper purposes," *see Addington v. US Airline Pilots Ass'n*, Nos. CV-08-1633, CV-08-1728, 2009 WL 856334 at *1 (D.Ariz. Mar. 26, 2009) (citing *Int'l Ass'n of Machinists v. Street*, 367 U.S. 740, 767-75 (1961) (emphasis added)), as when a union fails to grant non-members the right to dissent from political expenditures or levies dues increases without following the procedures set forth by federal labor law. *See, e.g., Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986) (granting restitution for agency fees charged for ideological expenditures unrelated to collective bargaining); *David Scharf and Samuel Offen*, 244 N.L.R.B. 905 (1979) (requiring disgorgement of dues and initiation fees illegally withheld).

The cases on which plaintiffs rely do not provide support for the claim that restitution may be available in this action. *International Association of Machinists v. Street* and *Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, et al. v. Allen* merely hold that agency shop agreements must grant non-members the opportunity to dissent from union political expenditures. Likewise, *Dean v. Trans World Airlines* is a case about *dissenting non-members* and compelled political speech, with no bearing on whether the remedy plaintiffs seek is available to them in a duty of fair representation case premised on a conflict of interest. 708 F.2d 486, 488 (9th Cir. 1983).¹ Finally, *Addington v. US Air Line Pilots Association* definitively rejected the measure of damages plaintiffs now propose. The court in *Addington* squarely held that dues restitution was an impermissible remedy because the "claim for restitution of dues [was] punitive" and therefore barred in duty of fair representation cases, noting further that the "plaintiffs [could not] cite any legal authority supporting their claim for restitution of dues." *See* 2009 WL 856334 at *1.

* * *

We look forward to discussing these issues in more detail during tomorrow's telephonic court conference.

Sincerely,



Daniel J. Toal

¹ In further support of ALPA's argument, the quote that plaintiffs selectively excerpt from *Dean* reads in full: "it would have been appropriate for Dean to seek judicial relief by way of . . . a rebate for *political and ideological expenditures*." *Id.* (emphasis added).

EXHIBIT F



TRUJILLO
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RICHARDS, LLC

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November 22, 2011

VIA EMAIL AND REGULAR MAIL

Steve Fram, Esq.
Archer & Greiner P.C.
One Centennial Square
Haddonfield, NJ 08033

RE: *Brady v. ALPA*
Civil Action No. 02-2917

Dear Mr. Fram:

Enclosed please find Plaintiffs' First Request for Production of Documents Directed to Defendant ALPA on the Issue of Damages.

Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Nicole M. Acchione', with a stylized, cursive script.

Nicole M. Acchione

Enclosures

cc: Dan Katz, Esq. (via email and regular mail)
Plaintiffs' Counsel (via email)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PATRICK BRADY, et al.	:	
	:	Civil Action No. 02-2917 (JEI)
Plaintiffs,	:	
	:	
v.	:	
	:	
AIR LINE PILOTS ASSOCIATION, et al.	:	
	:	
Defendant.	:	
	:	

**PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED
TO DEFENDANT ALPA ON THE ISSUE OF DAMAGES**

DEFINITIONS

- A. The terms "you" and "your" refer to Air Line Pilots Association, International (ALPA), or any individual who has acted on its behalf.
- B. The acronym "ALPA" refers to the Defendant, Air Line Pilots Association, International.
- C. The acronym "TWA" refers to Trans World Airlines, Inc.
- D. The acronym "TWA MEC" refers to the Trans World Airlines Master Executive Council.
- E. The term "non-ALPA carrier" refers to an airline in which the pilots of that airline are not represented by ALPA as its collective bargaining agent.
- F. The term "document" includes all materials described in Federal Rule of Civil Procedure 34(a).

G. The term "communication" means the transmittal of information in the form of facts, ideas, inquiries, or otherwise. All spoken or written exchanges (whether face-to-face or via telephone, teleconference, electronic transmission, e-mail, or recorded message) constitute "communications."

H. The term "concerning" means, without limitation, constituting, containing, showing, reflecting, discussing, relating to, commenting upon, pertaining to, mentioning, evidencing, quoting, describing, or referencing in any way, directly or indirectly.

I. Words in the singular include the plural thereof, and words of masculine gender include the feminine gender thereof.

J. The past tense includes the present tense and vice versa.

K. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

L. The words "any" and "all" shall be construed to mean "any" or "all" as required to bring within the scope of the discovery request the greatest amount of information.

DOCUMENT REQUESTS

Pursuant to Rule 34, Plaintiffs request Defendant produce the following documents within 30 days:

1. A complete list of TWA's fleet of aircraft as of April 9, 2001, or as close to that date as possible. If you do not have a responsive list, produce documents that reflect TWA's total fleet of aircraft as of that date.

RESPONSE:

2. The TWA pilot seniority list as of April 9, 2001, or as close to that date as possible. Please produce a copy of the list in electronic format.

RESPONSE:

3. The American pilot seniority list as of April 9, 2001, or as close to that date as possible. Please produce a copy of the list in electronic format.

RESPONSE:

4. The TWA / American Airlines merged pilot seniority list as of April 3, 2002, or as close thereto as possible. Please produce a copy of the list in electronic format.

RESPONSE:

5. A list of all mergers, bulk asset sales, or other strategic transactions between ALPA and non-ALPA airline carriers from 1980 to the present. If you do not have a responsive list, produce documents that reflect all mergers, bulk asset sales, or other strategic transactions between ALPA and non-ALPA airline carriers from 1980 to the present.

RESPONSE:

6. For every merger, bulk asset sale, or other similar strategic transaction between an ALPA and non-ALPA carrier from 1980 to the present, produce all documents reflecting:

- i. the outcome of the seniority integration between the two pilot groups, including but not limited to a copy of the final merged seniority list;
- ii. arbitration decisions, if any;
- iii. all correspondence, briefs or legal memoranda submitted by ALPA on behalf of its represented pilot group;
- iv. expert reports, if any, submitted by ALPA or the ALPA represented pilot group in support of seniority;
- v. the submission of, or request for submission of, the proposed final seniority list to the pilots for membership ratification.

RESPONSE:

7. All non-privileged documents concerning the Southwest Airlines and AirTran pilot seniority integration dispute, including seniority list proposals prepared or endorsed by ALPA on behalf of the Air Tran pilots, as well as the final seniority list.

RESPONSE:

8. All documents prepared by or for ALPA for the TWA MEC, or any of its committees, that analyzed seniority integration scenarios between the TWA and American pilots, including but not limited to any financial impact to the TWA pilots as result of those scenarios.

RESPONSE:

9. Any document provided to the TWA MEC, its Merger Committee or Merger Counsel by ALPA addressing what a reasonable seniority integration would look like.

RESPONSE:

10. Documents reflecting all union dues paid by TWA airline pilots to ALPA from January 1, 2001 through April, 2002.

RESPONSE:

11. All communications between you and Professor Michael Tannen concerning the seniority integration of the TWA and American pilots.

RESPONSE:

12. Any analysis prepared by or for ALPA concerning Tannen's Rightful Place Proposal.

RESPONSE:

13. All documents prepared by or for ALPA that analyzed the TWA pilots' career expectations prior to January 9, 2001.

RESPONSE:

14. All documents prepared by or for ALPA that analyzed the TWA pilots' career expectations after January 9, 2001.

RESPONSE:

15. Copies of all insurance policies which name you as an insured and would cover any part of a judgment entered in this case.

RESPONSE:

16. Any documents supporting ALPA's representation to the Jet Blue pilots that ALPA possesses over \$600,000,000 worth of insurance.

RESPONSE:

EXHIBIT G

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Don Addington; John Bostic; Mark)
Burman; Afshin Iranpour; Roger Velez;)
Steve Wargocki,

No. CV 08-1633-PHX-NVW
(consolidated)

Plaintiffs,

ORDER

vs.

US Airline Pilots Association; US)
Airways, Inc.,

Defendants.

Don Addington; John Bostic; Mark)
Burman; Afshin Iranpour; Roger Velez;)
Steve Wargocki, et al.,

CV08-1728-PHX-NVW

Plaintiffs,

vs.

Steven Bradford; Paul Diorio; Robert)
Frear; Mark King; Douglas Mowery; John)
Stephan, et al.,

Defendants.

Plaintiffs seek class-wide relief against Defendant USAPA, alleging that USAPA breached its duty of fair representation. In their motion for class certification, Plaintiffs indicated that they sought class-wide relief in the form of a refund of union agency fees and membership dues, as well as a vacatur of such fees and dues obligations. (Doc. # 120.) The Court granted Plaintiffs' motion to certify the class but reserved judgment on the validity of

1 this theory of relief. (Doc. # 248.) Defendant USAPA now moves for judgment on the
2 pleadings as to these dues and fees claims. (Doc. # 272.) (USAPA titled its motion a Motion
3 to Dismiss, but it is treated as a Motion for Judgment on the Pleadings under Fed. R. Civ. P.
4 12(c) because it was filed after the Answer.) In considering a motion for judgment on the
5 pleadings, the Court accepts the allegations in the Complaint as true. *Westlands Water Dist.*
6 *v. Firebaugh Canal*, 10 F.3d 667, 670 (9th Cir. 1993). The motion will be granted because
7 the remedies claimed are prohibited as punitive in this case.

8 Plaintiffs cite no case in which a court has awarded restitution of dues and fees for a
9 union's breach of the duty of fair representation as such. Broader principles of settled law
10 preclude the extension of this remedy to the case at bar. "To remedy a breach of the duty of
11 fair representation, a court must issue an award 'fashioned to make the injured employee
12 whole.' The court may order an injunction compelling the union, if it is still able, to pursue
13 the employee's claim, and may require monetary compensation, but it cannot award
14 exemplary or punitive damages." *Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*,
15 494 U.S. 558, 587 (1990) (quoting *Elec. Workers v. Foust*, 442 U.S. 42, 49 (1979)) (internal
16 citations omitted). Restitution of fees and dues in this case goes beyond any make-whole
17 remedy that the alleged harm requires.

18 To be sure, a refund of union dues may be appropriate and consistent with these
19 principles when the very collection or expenditure of dues is unlawful. *See, e.g., Morrison-*
20 *Knudsen Co. v. NLRB*, 276 F.2d 63, 74 (9th Cir. 1960) (noting that dues payments coerced
21 by unlawful threats may be refundable under the NLRA). The two cases Plaintiffs cite in
22 support of their theory involve certain wrongful expenditures unrelated to collective
23 bargaining and labor disputes. In *Int'l Ass'n of Machinists v. Street*, a refund was allowed
24 because the union had spent exacted funds for political purposes over the objection of an
25 employee. 367 U.S. 740, 767-75 (1961). The offending conduct in that case was the
26 collection and use of dues money for improper purposes; restitution therefore presented a
27 proportionate means of redress. *See id.* at 775. In the second case, the Ninth Circuit applied
28 *Street* in this spirit, holding that a union member with complaints about political expenditures


1 may not unilaterally reduce or stop dues payments but should seek judicial relief tailored to
2 the political expenditures themselves. *See Dean v. Trans World Airlines, Inc.*, 708 F.2d 486,
3 488 (9th Cir. 1983).

4 Plaintiffs, however, allege no wrongful collection or expenditure here. Plaintiffs
5 allege an independent failure to represent fairly that adversely affects their wages, benefits,
6 and working conditions. Their claim is not bound up with or confined by union dues and
7 fees. Whatever compensable damages may be attributable to the union's actions and
8 recoverable on that basis, the union's alleged failure is not remedied by the suspension or
9 disgorgement of its regular funding. And it is nothing short of punitive to extract monetary
10 relief from the union beyond whatever compensatory damages may be provable at trial.
11 "Such awards could deplete union treasuries, thereby impairing the effectiveness of unions
12 as collective-bargaining agents. Inflicting this risk on employees, whose welfare depends
13 upon the strength of their union, is simply too great a price for whatever deterrent effect
14 punitive damages may have." *Int'l Broth. of Elec. Workers v. Foust*, 442 U.S. 42, 50-51
15 (1979). This rule supplants the general common law principles Plaintiffs invoke concerning
16 fiduciary remedies.

17 There is no basis for relief relating to Plaintiffs' union dues and fees, whether already
18 paid or payable in the future.

19 IT IS THEREFORE ORDERED that Defendants' Motion for Judgment on the
20 Pleadings as to Plaintiffs' Dues Restitution Claim (doc. # 272) is granted. Plaintiffs' claims
21 for monetary and injunctive relief relating to past and future payments of union dues and fees
22 are dismissed with prejudice.

23 DATED this 26th day of March, 2009.

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Neil V. Wake
United States District Judge